

1 Honorable James L. Robart
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 Juweiya Abdiaziz ALI; A.F.A., a minor;
10 Reema Khaled DAHMAN; G.E., a minor;
11 Jaffer Akhlaq HUSSAIN; Seyedehfatemeh
12 HAMEDANI; Olad Issa OMAR; Faduma Olad
13 ISSA; F.O.I., a minor; and S.O.I., a minor; on
14 behalf of themselves as individuals and on
15 behalf of others similarly situated,

Plaintiffs,

v.

16 Donald TRUMP, President of the United States
17 of America; Jefferson B. SESSIONS, Attorney
18 General of the United States; U.S.
19 DEPARTMENT OF STATE; Rex W.
20 TILLERSON, Secretary of State; U.S.
21 DEPARTMENT OF HOMELAND
22 SECURITY; John F. KELLY, Secretary of
Homeland Security; U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; Lori
SCIALABBA, Acting Director of USCIS;
CUSTOMS AND BORDER PROTECTION;
Kevin K. McALEENAN, Acting
Commissioner of CBP; OFFICE OF THE
DIRECTOR OF NATIONAL
INTELLIGENCE; Michael DEMPSEY,
Acting Director of National Intelligence,

Defendants.

Case No: 2:17-cv-00135-JLR

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

1 Plaintiffs Juweiya Abdiaziz Ali, *et al.* and Defendants Donald Trump, *et al.*, by and through
 2 their counsel of record, hereby submit this Joint Status Report and Discovery Plan pursuant to Federal
 3 Rules of Civil Procedure 26(f), Western District of Washington Local Civil Rule 26(f), and the Court's
 4 Order dated February 21, 2017, Dkt. #38.

5 **1. Statement of the Nature and Complexity of the Case:**

6 Plaintiffs' Statement: This case involves a proposed nationwide class action challenge to
 7 Sections 1(f), 2, and 3 of Executive Order 13780 (EO2), Protecting the Nation From Foreign Terrorist
 8 Entry Into the United States, 82 Fed. Reg. 13209 (Mar. 9, 2017), as applied to Plaintiffs and putative
 9 class members consisting of all nationals of countries designated by Section 2 of EO2 who have applied
 10 for or will apply for an immigrant visa and the visa petitioners for those nationals; whose visa
 11 application adjudication has been or will be suspended or denied; or who have been or will be denied the
 12 ability to seek entry into and/or enter the United States, on the basis of EO2. Plaintiffs claim that EO2 is
 13 unlawful in that it violates, *inter alia*: the Immigration and Nationality Act (8 U.S.C. §§ 1152(a)(1)(A),
 14 1201(i)), the Administrative Procedure Act (5 U.S.C. §§ 706(2)(A)-(D)), 28 U.S.C. § 1361, the
 15 Establishment Clause of the First Amendment, and the Fifth Amendment's Due Process Clause and
 16 guarantee of equal protection. Plaintiffs believe that most, if not all, their claims can be resolved on
 17 summary judgment.

18 Defendants' Statement: Consistent with the Executive's broad constitutional authority over
 19 foreign affairs and national security, Section 1182(f) of Title 8 expressly authorize the President to
 20 suspend entry of any class of aliens when in the national interest. Section 1185(a) also authorizes the
 21 President to proscribe reasonable "rules, regulations and, and orders" regarding entry. The President
 22 lawfully exercised this broad authority in EO2. EO2 is neutral with respect to religion, and Plaintiffs
 23 cannot demonstrate that it infringes upon their due process or equal protection rights, or that they are
 24 entitled to review under the Administrative Procedure Act. Furthermore, Defendants contend that
 25 Plaintiffs' claims are not justiciable—the nonresident, unadmitted plaintiffs are not entitled to any
 26 judicial review, and their petitioning relatives in the United States cannot demonstrate any cognizable

1 injury fairly traceable to EO2 until their foreign national relatives have been denied a waiver through the
2 process that EO2 provides.

3 **2. Deadline for Joining Additional Parties:** Thirty days after the Court rules on Plaintiffs' pending
4 second motion for class certification, Dkt. #58.

5 **3. Assignment to a Magistrate Judge:** One or both parties do not consent to assignment of the
6 case to a Magistrate Judge.

7 **4. Discovery Plan:**

8 (A) initial disclosures: The parties exchanged initial disclosures on March 21, 2017.

9 (B) subjects, timing, and potential phasing of discovery:

10 Plaintiffs' position: Plaintiffs anticipate conducting discovery, potentially to include 30(b)(6)
11 depositions, on at least the following topics: the circumstances leading to Defendants' issuance of
12 Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82
13 F.R. 8977 (Feb. 1, 2017) (EO1) and EO2; the policy and purpose underlying EO1 and EO2; support for
14 statistics and related data contained or referenced in EO1 and EO2; interagency memorandum and
15 directives for implementing the EO's; interagency memorandum and directives responding to injunctive
16 relief directed at the EO's; and documents identifying the number of cases, processing times, and any
17 additional protocol implemented for processing Plaintiffs' and proposed class members' visa
18 applications. Plaintiffs ask this Court to set the deadline for completion of expert discovery as 120 days
19 before trial and the deadline for completion of fact discovery as 150 days before trial. Plaintiffs do not
20 believe that court-imposed phasing of discovery would be appropriate.

21 Defendants' position: Defendants believe that discovery and trial are inappropriate in this case,
22 which involves the Executive's discretionary national security and immigration authority. The Supreme
23 Court has made clear in the immigration context that courts may not "look behind the exercise of
24 [Executive] discretion" taken "on the basis of a facially legitimate and bona fide reason." *Kleindienst v.*
25 *Mandel*, 408 U.S. 753, 770 (1972); *see Fiallo v. Bell*, 430 U.S. 787, 796 (1977). As those cases
26 recognize, discovery and trial would thrust courts into the untenable position of probing the Executive's

1 judgments on foreign affairs and national security. And it would invite impermissible intrusion on
2 Executive Branch deliberations, which are constitutionally “privilege[d]” against such inquiry, *United*
3 *States v. Nixon*, 418 U.S. 683, 708 (1974), as well as litigant-driven discovery that would disrupt the
4 President’s ongoing execution of the laws, *see, e.g., Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982).
5 Searching for governmental purpose outside official pronouncements and the operative terms of
6 governmental action is fraught with practical “pitfalls” and “hazards” that courts should avoid. *Palmer*
7 *v. Thompson*, 403 U.S. 217, 224 (1971).

8 (C) electronically stored information:

9 Plaintiffs’ position: Plaintiffs anticipate that they will have little if any ESI to produce and that
10 such ESI (if any) will be limited to emails related to immigrant visa processing. Plaintiffs anticipate,
11 however, that Defendants may have substantial amounts of ESI to produce. Plaintiffs propose that the
12 Parties adopt the Western District of Washington’s Model Protocol for Discovery of Electronically
13 Stored Information in Civil Litigation.

14 Defendants’ position: for the reasons explained above, Defendants do not believe that discovery
15 is appropriate in this case. If this Court determines that discovery is appropriate, Defendants believe that
16 ESI production scope and form should be governed by the Western District of Washington’s Model for
17 Discovery of Electronically Stored Information in Civil Litigation with case-specific edits provided to
18 Plaintiffs.

19 (D) privilege issues:

20 Plaintiffs’ position: If either Party discovers that it inadvertently produced privileged
21 information, the disclosing Party shall notify the receiving Party of the inadvertent disclosure and the
22 receiving Party will return the documents. Any other privileged matter may be addressed in the
23 protective order that the parties will file in anticipation of discovery production.

24 Defendants’ position: for the reasons explained above, Defendants do not believe that discovery
25 is appropriate in this case. However, if this Court determines that discovery is appropriate, Defendants
26 intend to join Plaintiffs in a protective order concerning privilege issues.

1 (E) proposed limitations on discovery:

2 Plaintiffs' Position: Plaintiffs believe that the limitations on discovery imposed by the Federal
 3 Rules of Civil Procedure and Local Civil Rules should apply, but that no other limitations should be
 4 applied.

5 Defendants' position: for the reasons explained above, Defendants do not believe that discovery
 6 is appropriate in this case.

7 (F) the need for any discovery related orders: The parties request a Rule 16(b) Scheduling Order.
 8 Their respective positions regarding deadlines are presented below.

Discovery	Plaintiffs' Deadline	Defendants' Deadline
Join additional parties	30 days after resolution of class certification motion.	Thirty days after resolution of class certification motion.
disclose primary experts	180 days before trial	For the reasons explained above, Defendants do not believe that discovery is appropriate in this case.
disclose rebuttal expert	30 days after disclosure of primary experts, as provided in Fed. R. Civ. Proc. 26(a)(2)(D)(ii)	For the reasons explained above, Defendants do not believe that discovery is appropriate in this case.
amend the pleadings	120 days before trial	Defendants believe the normal timelines under Federal Rule of Civil Procedure 15 should apply.
complete fact discovery	150 days before trial	For the reasons explained above, Defendants do not believe that discovery is appropriate in this case.
complete expert discovery	120 days before trial	For the reasons explained above, Defendants do not believe that discovery is appropriate in this case.
dispositive motions	90 days before trial	Defendants intend to move to dismiss the case. If the Court does not grant their motion, Defendants request that the Court set a dispositive motion deadline after that time.
motions in limine	21 days before trial	For the reasons explained above, Defendants do not believe that a trial or motions in limine are appropriate in this case.

1 pretrial conference	2 weeks prior to trial	For the reasons explained above, Defendants do not believe that a trial or a pretrial conference is appropriate in this case.
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3 **5. The parties' views, proposals, and agreements, on items set forth in Local Civil Rule**

4 **26(f)(1)**

5 (A) prompt case resolution: The parties do not foresee a possibility for promptly settling or
6 otherwise resolving this case absent revocation of EO2 or a decision by the U.S. Supreme Court that
7 definitely resolves the issues present in favor of one of the parties.

8 (B) alternative dispute resolution:

9 Plaintiffs' position: Plaintiffs cannot predict at this time whether trial will be necessary but
10 believe that resolution by summary judgment is reasonably likely. Therefore, at this time, Plaintiffs do
11 not intend to utilize the Individualized Trial Program or the Alternative Dispute Resolution option.

12 Defendants' position: For the reasons explained above, Defendants do not believe that a trial,
13 and therefore the Individualized Trial Program or the Alternative Dispute Resolution option, are
14 appropriate in this case.

15 (C) related cases:

16 In this district, the related cases of *Washington v. Trump*, No. 2:17-cv-141-JLR (W.D. Wash.)
17 and *Doe v. Trump*, No. 2:17-cv-178-JLR (W.D. Wash.) (both pending before this Court) also challenge
18 EO2. The case of *Wagafe v. U.S. Citizenship and Immigration Services*, No. 2:17-cv-00094 (W.D.
19 Wash.), is pending in this district and challenges only Sections 3(c) and 4 4of EO1, but only with respect
20 to adjudications of immigration benefits applications. Plaintiffs in *Wagafe* moved for leave to amend
21 their complaint, but that motion has not yet been granted.

22 Outside this district, two courts have enjoined portions of EO2, *see International Refugee
Assistance Project v. Trump*, No. 8:17-cv-361-TDC (D. Md.) (enjoining Section 2(c) of EO2), appeal
23 pending *International Refugee Assistance Project v. Trump*, No. 17-1351 (4th Cir.); and *Hawai'i v.
Trump*, No. 1:17-cv-50-KSC (D. Haw.) (enjoining Sections 2 and 6 of EO2), and a third court declined
24 to do so, *see Sarsour v. Trump*, No. 1:17-cv-120-IDD, ECF 36 (E.D. Va., Mar. 24, 2017). Cases

1 challenging EO2 in which a preliminary injunction (PI) motion is pending include: *Al-Mowafak v.*
 2 *Trump*, No. 3:17-cv-00557-WHO (N.D. Cal.); *Hagig v. Trump*, No. 1:17-cv-289-RBJ (D. Colo.); *Pars*
 3 *Equality Center v. Trump*, No. 1:17-cv-255-TSC (D.D.C.); *Universal Muslim Assoc. of America, Inc. v.*
 4 *Trump*, No. 17-cv-537 (D.D.C.). Cases challenging EO2 which do not involve motions for TROs or PIs
 5 at this time include *Unite Oregon v. Trump*, No. 3:17-cv-179-PK (D. Or.); *Tawfeeq v. U.S. Department*
 6 *of Homeland Security*, No. 1:17-cv-353-TCB (N.D. Ga.); *Huff v. Trump*, No. 17-cv-2081 (N.D. Ill.).

7 As this Court already has ruled, Plaintiffs' pending TRO motion is stayed "so long as the
 8 nationwide TRO in *Hawai'i v. Trump* or a preliminary injunction of equal scope remains in effect."
 9 Dkt. 79. However, pursuant to this Court's order, this case proceeds forward, including all briefing and
 10 hearings related to their motion for class certification.

11 (D) discovery management:

12 Plaintiffs' position: The Parties will work together to manage discovery in a way that will
 13 promote the expeditious and inexpensive resolution of the case. In particular, the parties have no
 14 objection to engaging in mediation and will consider requesting the assistance of a magistrate judge for
 15 mediation and/or settlement conferences. The Parties do not agree to forgo or limit depositions,
 16 exchange documents informally, or use an abbreviated pretrial order. The parties reserve the right to
 17 request discovery and/or case management conferences with Judge Robart. Plaintiffs do not believe
 18 Multi-District Litigation Procedures are appropriate at this juncture given the scope of their claims and
 19 individualized circumstances presented.

20 Defendants' position: For the reasons explained above, Defendants do not believe that discovery
 21 is appropriate in this case. If this Court orders that the parties engaged in discovery, Defendants believe
 22 that Multi-District Litigation Procedures and/or consolidation with other cases may be appropriate.

23 (E) anticipated discovery sought:

24 Plaintiffs' position: Plaintiffs anticipate conducting discovery, potentially to include 30(b)(6)
 25 depositions, on at least the following topics: the circumstances leading to Defendants' issuance of EO1
 26 and EO2, the policy and purpose underlying EO1 and EO2, support for statistics and related data

1 contained or referenced in EO1 and EO2, interagency memorandum and directives for implementing the
2 EO's, interagency memorandum and directives responding to injunctive relief directed at the EO's, and
3 documents identifying the number of cases, processing times, and any additional protocol implemented
4 for processing Plaintiffs' and proposed class members' visa applications.

5 Defendants' position: For the reasons explained above, Defendants do not believe that discovery
6 is appropriate in this case.

7 (F) phasing motions: The Parties do not anticipate phasing dispositive motions in this case.

8 (G) preservation of discoverable information:

9 Plaintiffs' position: Plaintiffs will issue a preservation notice to Defendants by March 31, 2017.

10 Defendants' position: For the reasons explained above, Defendants do not believe that discovery
11 is appropriate in this case. In any event, Defendants do not believe that they have an obligation to
12 provide Plaintiffs with a preservation notice.

13 (H) privilege issues:

14 Plaintiffs' position: Plaintiffs intend to propose that if either Party discovers that it inadvertently
15 produced privileged information, the disclosing Party shall notify the receiving Party of the inadvertent
16 disclosure and the receiving Party will return the documents. This matter will be addressed in the
17 protective order that the parties will file in anticipation of discovery production.

18 Defendants' position: for the reasons explained above, Defendants do not believe that discovery
19 is appropriate in this case. However, if this Court determines that discovery is appropriate, Plaintiffs'
20 requested discovery would likely raise numerous privileges and important separation of powers issues.
21 Plaintiffs would address these concerns in a motion for a protective order.

22 (I) Model Protocol for Discovery of ESI:

23 Plaintiffs' position: Plaintiffs anticipate that they will have little if any ESI to produce and that
24 such ESI (if any) will be limited to emails related to immigrant visa processing. Plaintiffs anticipate,
25 however, that Defendants may have substantial amounts of ESI to produce. Plaintiffs propose that the
26 Parties adopt the Western District of Washington's Model Protocol for Discovery of Electronically

1 Stored Information in Civil Litigation.

2 Defendants' position: For the reasons explained above, Defendants do not believe that
3 discovery, and therefore ESI, is appropriate in this case. However, if this Court does allow for
4 discovery, Plaintiffs would generally consent to the Model Protocol for Discovery of ESI with the case-
5 specific edits provided to Plaintiffs.

6 (J) alternatives to Model Protocol:

7 Plaintiffs' position: Plaintiffs agree to the Model ESI Agreement.

8 Defendants' position: For the reasons explained above, Defendants do not believe that discovery
9 is appropriate. If this Court allows for discovery, Defendants would reserve the ability to make
10 adjustments to the Model ESI Agreement.

11 **6. Date of completion of discovery:**

12 Plaintiffs' position: 150 days before the scheduled trial.

13 Defendants' position: For the reasons explained above, Defendants do not believe that a trial,
14 pretrial statements, or a pretrial order is appropriate in this case.

15 **7. Bifurcation of trial or other issues:** The parties agree that the case is not amenable to
16 bifurcation.

17 **8. Whether to dispense with, in whole or in part, pretrial statements and pretrial order called**
18 **for by Local Civil Rules 16(e), (h), (i), and k, and 16.1 for the sake of economy:**

19 Plaintiffs' position: Plaintiffs do not wish to dispense with the pretrial statements and orders
20 called for by the aforementioned Local Rules.

21 Defendants' position: For the reasons explained above, Defendants do not believe that a trial,
22 pretrial statements, or a pretrial order is appropriate in this case.

23 **9. Utilization of Individualized Trial Program set forth in Local Civil Rule 29.2 or any ADR**
24 **options set forth in Local Civil Rule 39.1:** The Parties believe that resolution by summary
25 judgment is likely. Therefore, at this time, the parties do not intend to utilize the Individualized Trial
26 Program or the Alternative Dispute Resolution option.

1 **10. Suggestion for shortening or simplifying the case:** The Parties do not have any suggestions for
2 shortening or simplifying the case at this time but will work cooperatively to identify such opportunities,
3 including the possibility of stipulating to any undisputed facts.

4 **11. Date case will be ready for trial:**

5 Plaintiffs' position: March 2018.

6 Defendants' position: For the reasons explained above, Defendants do not believe that a trial is
7 appropriate in this case.

8 **12. Trial by jury or non-jury:**

9 Plaintiffs' position: Non-jury.

10 Defendants' position: For the reasons explained above, Defendants do not believe that a trial is
11 appropriate in this case.

12 **13. Number of trial days required:**

13 Plaintiffs' position: Five.

14 Defendants' position: For the reasons explained above, Defendants do not believe that a trial is
15 appropriate in this case.

16 **14. Names, addresses, and telephone numbers of all trial counsel:**

17 Plaintiffs' trial counsel: Matt Adams, Glenda M. Aldana Madrid, Maria Lucia Chavez,
18 Northwest Immigrant Rights Project, 615 Second Ave., Ste. 400, Seattle, WA 98104, (206) 957-8611;
19 Trina Realmuto, Kristin Macleod-Ball, National Immigration Project of the National Lawyers Guild, 14
20 Beacon Street, Suite 602, Boston, MA 02108, (617) 227-9727; Mary Kenney, Aaron Reichlin-Melnick,
21 Melissa Crow, American Immigration Council, 1331 G Street, NW, Suite 200, Washington, D.C. 20005,
22 (202) 507-7512.

23 Defendants' trial counsel: For the reasons explained above, Defendants do not believe that a trial
24 is appropriate in this case.

1 **15. Dates on which trial counsel may have complications:**

2 Trial counsel is not currently aware of any conflicts during March 2018 or later.

3 **16. Service:** Plaintiffs, through their counsel, have effectuated service on all Defendants.

4 **17. Request for a scheduling conference prior to entry of a scheduling order:**

5 Plaintiffs' position: Plaintiffs believe the Court should move forward and issue a scheduling
6 order.

7 Defendants' position: Due to the parties' differing positions concerning the appropriateness of
8 discovery and trial, Defendants request a scheduling conference prior to the entry of a scheduling order.

9 **18. Date(s) by which all nongovernmental corporate parties must file its disclosure statement:**

10 There are no nongovernmental corporate parties in this case at this time.

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NORTHWEST IMMIGRANT RIGHTS PROJECT

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1 DATED this 28th day of March, 2016.

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<p>3 <u>s/Matt Adams</u>, WSBA No. 28287 4 <u>s/Glenda M. Aldana Madrid</u>, WSBA No. 46987 5 <u>s/Maria Lucia Chavez</u>, WSBA No. 43826</p>	<p>CHAD A. READLER Acting Assistant Attorney General Civil Division</p>
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<p>8 <u>s/Trina Realmuto</u>, admitted <i>pro hac vice</i> 9 <u>s/Kristin Macleod-Ball</u>, admitted <i>pro hac vice</i></p>	<p>GISELA A. WESTWATER Assistant Director</p>
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